

IN THE SENATE

SENATE BILL NO. 1044

BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

AN ACT

RELATING TO EMINENT DOMAIN; AMENDING SECTION 7-701A, IDAHO CODE, TO PROVIDE
ADDITIONAL RESTRICTIONS ON THE USE OF EMINENT DOMAIN AND TO MAKE TECHNICAL
CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 7-701A, Idaho Code, be, and the same is hereby
amended to read as follows:

7-701A. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES, URBAN
RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES. (1) This section limits and re-
stricts the use of eminent domain under the laws of this state or local
ordinance by the state of Idaho, its instrumentalities, political subdivi-
sions, public agencies, or bodies corporate and politic of the state to
condemn any interest in property in order to convey the condemned interest to
a private interest or person as provided herein.

(2) Eminent domain shall not be used to acquire private property:

(a) For any alleged public use which is merely a pretext for the trans-
fer of the condemned property or any interest in that property to a pri-
vate party; ~~or~~

(b) For the purpose of promoting or effectuating economic development;
provided however, that nothing herein shall affect the exercise of emi-
nent domain:

(i) Pursuant to chapter 15, title 70, Idaho Code, and title 42,
Idaho Code; or

(ii) Pursuant to chapters ~~19~~, 20 or 29, title 50, Idaho Code, ex-
cept that no private property shall be taken through exercise of
eminent domain within the area of operation of a housing authority
or within an urban renewal area or within a deteriorated or deteri-
orating area or within a competitively disadvantaged border com-
munity area unless the specific property to be condemned is proven
by clear and convincing evidence to be in such condition that it
meets all of the following requirements:

1. The property, due to general dilapidation, compromised
structural integrity, or failed mechanical systems, endan-
gers life or endangers property by fire or by other perils
that pose an actual identifiable threat to building occu-
pants; and

2. The property contains specifically identifiable condi-
tions that pose an actual risk to human health, transmission
of disease, juvenile delinquency or criminal content; and

3. The property presents an actual risk of harm to the public
health, safety, morals or general welfare; or

1 (iii) For those public and private uses for which eminent domain is
2 expressly provided in the constitution of the state of Idaho; or
3 (c) For trails, paths, greenways or other ways for walking, running,
4 hiking, bicycling or equestrian use, unless adjacent to a highway, road
5 or street.
6 (3) This section shall not affect the authority of a governmental en-
7 tity to condemn a leasehold estate on property owned by the governmental en-
8 tity.
9 (4) The rationale for condemnation by the governmental entity propos-
10 ing to condemn property shall be freely reviewable in the course of judicial
11 proceedings involving exercise of the power of eminent domain.